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# Conflict of Laws

Fletcher Reed Andrews

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his policy or had exercised his option under the policy to receive the cash value in lieu of the other options which would extend the policy of insurance. The court held that since the cash surrender value was not in the nature of an unconditional debt, Section 11851 of the Ohio General Code provided no basis for a judgment against the garnishee. In refusing recovery, it applied the principle that the right of a creditor to garnishee a debt of his debtor in the hands of a third person depends on whether the debtor would have a present right of action against such third persons.

SAMUEL SONENFIELD

## CONFLICT OF LAWS

### *Federal Versus State Law*

In *Trees v. Pennsylvania R.R.*<sup>1</sup> the court recognized the rule that interstate shipments are governed by federal law. The suit was brought to recover damages for injuries to livestock, and the issues involved the liability of the carrier, including standard of care.

A decision of the Supreme Court of the United States comes within the purview of this survey because the action originated in Ohio.<sup>2</sup> Suit was brought under the Federal Employers' Liability Act by an employee seeking damages for personal injuries. By a divided court, two propositions were held. First, that in such an action, federal law rather than state law governs as to whether a release is void because of fraudulent misrepresentation; and secondly, that in such an action, federal law rather than state law determines whether a certain factual issue shall be determined by the judge or by the jury.

### *Domicile of Minor Child: Jurisdiction to Award Custody*

*Anderson v. May*<sup>3</sup> held that the domicile of a minor child is ordinarily that of the father, which in this instance was Wisconsin, and that under the circumstances of the case it did not change by the removal of the mother and children to Ohio. The case held also that under the circumstances the Wisconsin court had jurisdiction to award custody of the children to the father in connection with a divorce action by him. Consequently, in a habeas corpus action by the father, the Ohio court affirmed a judgment re-

<sup>1</sup> 91 Ohio App. 497, 109 N.E.2d 29 (1951).

<sup>2</sup> *Dice v. Akron, Canton & Youngstown R.R.*, 342 U.S. 359, 72 Sup. Ct. 312 (1952), reversing 155 Ohio St. 185, 98 N.E.2d 301 (1951).

<sup>3</sup> 91 Ohio App. 557, 107 N.E.2d 358 (1951), *appeal dismissed*, 157 Ohio St. 436, 105 N.E.2d 648 (1952), *probable jurisdiction noted mem.*, 73 Sup. Ct. 43 (1952). Appellant's motion to proceed on the typewritten record was granted. 21 U.S.L. WEEK 3138 (U.S. Nov. 18, 1952).

<sup>4</sup> 106 F. Supp. 308 (N.D. Ohio 1952).